

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii

March 24, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

SUBJECT: (Non Action Item) Update to the Board of Land and Natural Resources on action taken at the September 23, 2005 BLNR meeting relating to Kealakekua Bay

At the September 23, 2005 Land Board meeting, the department presented recommendations to the Land Board (Board) regarding the management of Kealakekua Bay on the island of Hawaii. The Board directed staff to report back to them within six months with a status report on the department's actions at Kealakekua Bay and a report on how the department planned to address the impacts at Ka'awaloa. Thus, this submittal is an update to the Board on the actions undertaken by staff to date.

Since the September 23 Board meeting the department has worked with the community in addressing the recommendations approved by the Board. Attachment A lists the Board's actions followed by some of the next steps the department is taking to implement these actions.

In October of 2005, the community at the direction of the department was asked to form working groups to meet and discuss the actions of the Board. Three working groups made up of community members and commercial operators were formed. These groups met throughout November, December and January and were able to provide recommendations to staff on implementation of the Board's actions. The working groups met on January 31, 2006 to summarize their recommendations, which are attached as attachments C, D, and E.

**KA'AWALOA:**

At the September 23, 2005 Land Board meeting the Board specially asked for an update on how the department planned to address impacts on Ka'awaloa.

On January 31, 2006 department staff from the Chairperson's Office, Division of Historic Preservation and Division of State Parks accompanied members of the community, kayak operators, and Hawaii County staff to Ka'awaloa for a site visit.

Gordon Leslie of Malama Pono graciously provided transportation to the site. Once at Ka'awaloa the group inspected various areas for possible use and discussed possible scenarios.

Ka'awaloa Launching and Landing Protocols

Launch and Landing will be made at Awili at the location shown on attachment B as 1. This location was formerly used as a canoe landing. The area consists of an exposed storm beach with a channel and gradual incline over pahoehoe, which is ideal since this lava surface is not as delicate as other areas.

Kayak tour leaders will land first and place a bamboo or similar material landing pad to help protect the lava surface when the kayaks are brought on shore. They will then assist those on their tour with the landing procedure as well.

After all kayaks have landed, kayaks will be carried to the kayak temporary storage area near the terminus of Ka'awaloa Road shown on Attachment B as 2. This will ensure that kayaks are out of the way of others who may be landing at the site and also ensure that the kayaks are out of the water and do not float away.

#### Open Area

From there, kayak tours will follow an existing marked trail (marked on Attachment B in red) that leads to a clearing area marked as site 3 on Attachment B. Tours may not deviate from this trail. This area can be used for orientation, eating, and as a resting area (trees provide adequate shade). Additionally, this is the area that portable toilets may be put up and utilized. This area is covered by a dense growth of kiawe trees that will be trimmed, especially those trees overhanging the shoreline. Historic Preservation and State Park staff will work with the community on accomplishing needed maintenance and preservation of the area.

#### Monument and Entry Into The Water

From the open area the designated path continues to the Captain Cook Monument. The Monument offers an opportunity for visitors to take pictures and read the various inscriptions and plaques in the area. There is also a concrete pier from which visitors are able to enter and exit the water for swimming and snorkeling, marked as site 4 on Attachment B. Again, as with Awili landing area, it offers the suitable place for people to walk, as it is a man made structure. Entry and exit from the landing will be made via portable ladder that the kayak operators will provide (and remove after each tour). Entry and exit from the Awili landing site has also been discussed and more information is needed from all parties before the appropriateness of using the area or water entry is determined.

#### Launching

Launching of the kayaks will be made from the Awili following the same protocols as the landing.

#### Other Protocols

Besides the protocols outlined above, conditions will be included in all permits to add the following conditions:

- Permittee must stay on the designated trail and is confined to the Awili, trail, open area and monument.
- Permittee shall not restrict or infringe on the public's opportunity to use and enjoy these public resources.
- Permittee is responsible for cleanup and hauling away, and any costs associated therewith, of any trash resulting from the permit activity.
- Permittee is required to remove litter accumulations at Ka'awaloa four (4) times per year.
- Permittee shall provide at its sole cost and expense portable toilets or related facilities during the time the Permittee is present with guests at Ka'awaloa.
- Prior to or at the initial contact at the premises, Permittee shall give to each guest a briefing apprising each the importance and significance of the area's natural and cultural resources.

- No one associated with the Permit (i.e. Permittee, guides or guests) shall allow any guides or guests to disturb any archaeological sites. Any changes or disturbances to archaeological sites will be reported immediately to DLNR.
- Permittee may not modify the Ka'awaloa site by planting new plants, moving rocks or erecting any temporary structures (portable toilets are excluded from this provision).
- Permittee must adhere to Ka'awaloa protocols developed by the department.

## MEETINGS:

### Community Meetings

Besides the working group meetings, members of the community have met multiple times since the September Board meeting. These meetings were facilitated by Hawaii County and attended by department staff.

### Commercial Operator Meetings

Department staff has had various meetings with kayak operators and motorized vessel operators to discuss use of Ka'awaloa, permit conditions, scheduling and fees.

Kayak Association of the Islands - January 18, 2006 and March 7, 2006.

Motorized (including drift-ins) Operators - February 23, 2006 and March 7, 2006.

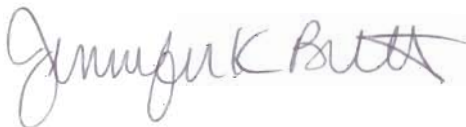
Fairwind Operators - March 7, 2006

On March 7th department staff met with kayak operators, and motorized vessel operators (including Fairwind) to discuss scheduling of commercial activity in the Bay.

These meetings have proved valuable and staff continues to work with these operators on finalization of permits and their eventual implementation. Draft permits for commercial kayak and motorized vessel operations in the Bay are currently being reviewed by the AG's office.

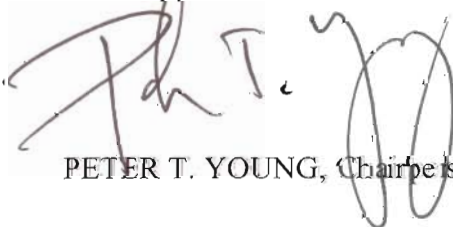
The department continues to move forward on implementation of the Board's actions. The community, commercial operator and staff are eager to implement the Board's actions and to monitor the activities to ensure that the Bay is protected.

Submitted by,



Jennifer K. Bethel  
Project Coordinator

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson

## Attachment A

### PRIOR BOARD ACTION:

- 1) Approve and authorize the department to conduct public hearings to amend HAR §13-29-1, HAR §13-29-2 and HAR §13-244-30 and add HAR §13-256-165 to establish a “kapu” area, to be identified as Zone C. The area will be closed to all users and uses. Zone C is generally represented on Attachment 1 and proposed HAR amendments and additions are shown as Attachments 2, 3 and 4.
  - Take measurements for correct buoy positions
  - Have rules approved by AG
  - Hold public hearing
  - Have final rules approved by Land Board
- 2) Authorize the department, to work with the kayak operators and the community to develop a designated landing site and establish proper procedures and techniques (use of mats etc.) at Ka’awaloa for the entry/exit of kayakers, as well as develop appropriate signage for the area (to comply with State Park rules).
  - Integrate Ka’awaloa protocols into permits.
- 3) Authorize the department to conduct public hearings to amend HAR §13-29-2 and HAR §13-244-30 and add HAR §13-256-165 to prohibit introductory/training SCUBA diving within Kealakekua Bay. Proposed HAR rules are shown as attachments 2, 3 and 4.
  - Have rules approved by AG
  - Hold public hearing
  - Have final rules approved by Land Board
- 4) Authorize the installation of kayak mooring buoys (within Zone A) near Ka’awaloa to be shared by all kayak users, recreational and commercial.
  - Continue to investigate need for buoys
- 5) Authorize further investigation, with priority focused on culturally appropriate composting facilities, of alternatives and ultimate implementation of restroom facilities at Ka’awaloa.
  - Mandate use of “portable” toilets for all kayak operators
  - Support continued use of portable toilets at the pier
- 6) Authorize the construction of additional parking on the State Park parcel along Lower Government Road.
  - Clear area for use
- 7) Authorize the installation of ladders at Napoopoo Landing for safer ingress/egress for boaters, swimmers, kayakers and other users of Napoopoo Landing.
  - Find prototypes of ladder - portable, floating raft with ladder that could be removed easily
  - Work with HP and OCCL on possible historic and conservation issues
- 8) Initiate, with appropriate partners, a “Makai Watch” program at Kealakekua Bay.
  - Continue to encourage community to work with Makai Watch partners to develop program at the bay

- 9) Authorize the department to fund (through commercial fees suggested in this submittal) and assign an on-site Ranger(s) at Kealakekua Bay to help monitor and manage uses and activities of the Bay for the protection of the resource and the enjoyment and safety of visitors and residents.
- Position approved
  - Begin Recruitment
- 10) Authorize the department to reconvene the intradepartmental working group at least once a year to discuss commercial permits, level and quality of visitation, the status of the resources, and enforcement/management concerns. Incorporate all appropriate DLNR divisions in the discussions and include community representatives, Bay users, cultural practitioners, permittees and others.
- Community group continues to meet on a regular basis with the assistance of Hawaii County as facilitators
  - DLNR continues to coordinate internally on Kealakekua Bay issues
- 11) In accordance with HAR 13-321-51, 13-29-4, 13-250-5, 13-256-3, 13-146-68 and HRS 190-4 and 187A-6-b, authorize the Chairperson to negotiate and enter into permit agreements, generally represented in attachment 6 and subject to Attorney General approval, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms not to exceed one year, with commercial kayak operators, that include permit fees of \$5 per guest per day (permit revenue to be divided as follows: first, cover costs and expenses related to the resource ranger stationed at Kealakekua Bay, kayak mooring buoy maintenance and operation and maintenance of portable toilets, other associated costs in the Bay, then, any balance to be divided 1/4 - 1/4 - 1/4 - 1/4 between DAR, DOBOR, Parks and DOCARE.) Permittee shall be required to conduct safety and natural & cultural resource briefings prior to entering the water at Napoopoo Wharf. The chairperson will work with DLNR staff and the commercial operators to develop final permit conditions.
- Continue work with kayak operators
  - Finalization of permit conditions
  - Finalization of schedule
  - Permits are currently being review by the AG's office
- 12) Authorize the chairperson to investigate and implement actions, including assessing a fee of \$5 per kayak, to address the management of rental operators who rent kayaks offsite whose guests ultimately end up being used within Kealakekua Bay.
- Continue to investigate alternatives for management of kayak rental (commercial and non-commercial) use in the bay
- 13) In accordance with HAR 13-321-51, 13-29-4, 13-250-5, 13-256-3, 13-146-68 and HRS 190-4 and 187A-6-b, authorize the Chairperson to negotiate and enter into permit agreements, generally represented in attachment 7 and subject to AG approval, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms less than one year, with commercial drift-in snorkel and scuba operators, that include permit fees of \$3 per guest per day (permit revenue to be divided as follows: first, cover costs and expenses related to the resource ranger stationed at Kealakekua Bay, kayak mooring buoy maintenance and operation and maintenance of portable toilets, other associated costs in the Bay, then, any balance to be divided 1/4 - 1/4 - 1/4 - 1/4 between

DAR, DOBOR, Parks and DOCARE.) Permittee shall be required to conduct safety and natural & cultural resource briefings prior to guests entering the water at Kealakekua Bay. The chairperson will work with DLNR staff and the commercial operators to develop final permit conditions.

- Continue work with motorized operators
- Finalization of permit conditions
- Finalization of schedule
- Permits are currently being review by the AG's office

14) Authorize the department to evaluate the existing permitting of Fair Wind Cruises and other moorings in the Bay, and return to the board prior to the expiration of their existing permits with recommendations on subsequent disposition of permits.

- Continue work with Fairwind
- Continue to evaluate permit and assess possible new restrictions and fees (to bring their permit in line with other motorized vessels)

15) In lieu of a kayak rental concession at Napoopoo Landing, authorize the chairperson to negotiate with the Hawaii Island Kayak Association for daily services at Napo'opo'o landing including: Giving a safety and natural and cultural resources briefing to all independent kayakers/paddlers; Assisting with the safe launching and landing of independent kayakers/paddlers from Napoopoo Landing; Monitoring pier use (kayak numbers, parking, visitor #s); and Coordinating with the state Ranger program, the Makai Watch program, and DLNR staff.

- Kayak Association of the Islands (formerly HIKA) received a grant from the Hawaii Tourism Authority to fund its services at the pier
- DLNR will continue to work with HIKA to ensure they are following thru with obligations in an appropriate manner

16) Authorize the department to work with the commercial entities within the Bay (kayak, drift-in, mooring users) to establish an appropriate number of users in the bay at any given time. Further, authorize the chairperson to monitor and be authorized to make immediate adjustments during the term of the permits to the number of users within the bay, as necessary to protect the bay's resources and to mitigate user conflicts.

- Develop monitoring protocol to monitor numbers once permits are issued

17) Require the department to report back to the Board periodically to update the Board on the status of Kealakekua Bay and if necessary provide additional recommendations including amendments to the recommendations proposed in this submittal.

- The department will come back to the board within six months with another update on actions of the department and the community

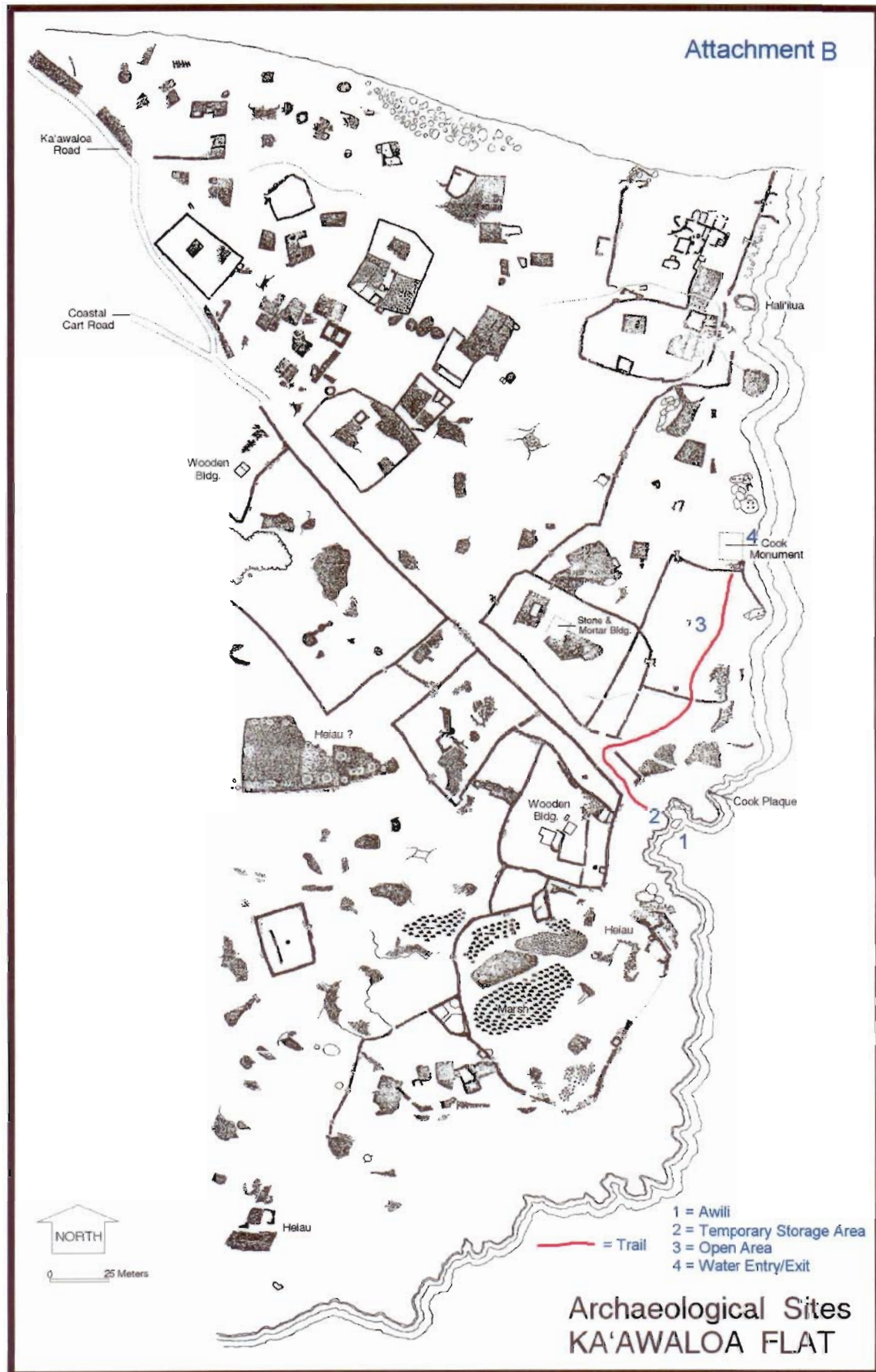
18) Any other commercial ocean recreational activity within Kealakekua Bay is subject to Land Board approval.

- The use of canoes (sailing and paddling) has been discussed and the department is evaluating their use along with all other commercial activity in the bay

- 19) The dispositions and rules changes contained within this submittal are contingent upon approval by the State Attorney General's office.
- Permits are being reviewed by the AG
- 20) Authorize the chairperson to work with the SNUBA operator in Kealahou Bay to develop proper protocols to ensure that SNUBA activities do not negatively impact the bay's resources.
- Staff has worked with the Fairwind SNUBA operator on operational protocols
  - These protocols will need to be formalized and incorporated into Fairwind permit



# Attachment B





## **Recommendations (Item #6)**

**From:** Group #1, Frank Carpenter

**Date:** 12/30/2005

### **Item #6**

Authorize the construction of additional parking on the State Park parcel along Lower Government Road.

### **Considerations**

- Wharf is for boating.
- Parking around wharf.
- Engineered drywells may be needed if area paved.
- ADA compliance.
- Definition of "short-term" and "exclusively".

### **Recommendations**

1. (That the State complete the additional parking lot along Lower Government Rd. to accommodate commercial and long term parking.)
  2. That both lots (short-term Wharf area and long-term & commercial Lower Government Road) be paved, ADA compliant, marked & blocked, with drywells to be determined.
- Voted All Present in favor.

### **Alternatives Discussed**

- **No parking at wharf:** would have a negative impact on the community, which feels as though it would be a giveaway to commercial interests.

## **Recommendations (Item #7)**

**From:** Group #1, Frank Carpenter

**Date:** 12/30/2005

### **Issue**

Authorize the installation of ladders at Napoopoo Landing for safer ingress/egress for boaters, swimmers, kayakers and other users of Napoopoo Landing.

### **Considerations**

- Harbor facility conflicts with ladders.
- Swimmers' safety around boating.
- Rescue & 1<sup>st</sup> aid needs.
- Need for variance.

### **Recommendation**

1. Construct a portable raft with a ladder (or steps)
  2. Construct a permanent ladder on the mauka side of the wharf area.
  3. Construct a permanent ladder on the makai side of the wharf area.
- Voted All Present in favor.

### **Alternatives Discussed**

As an alternative to launching and lading kayaks at the Napoopoo wharf we discussed the

- **Launching and landing from KE KOA Bay;** which is directly across (adjacent) from the wharf to the north of the park area.
  - Some rocks which would need to be removed in order to make the area safe
  - Would alleviate some of the congestion at the wharf and allow for other vessels to access the pier.
  - Would provide a more level entry and exit to provide a safer alternative to the wharf.
  - May not need a variance.

## **Recommendation (Item #8)**

**From:** Group #1, Frank Carpenter

**Date:** 12/30/2005

### **Issue**

Initiate, with appropriate partners, a "Makai Watch" program at Kealahkekua Bay.

### **Considerations**

- Community Sensitivities to outside entities, viz issue within village.
- Makai Watch is an empowering structure, as opposed to an outside (imposing) power.
- Concerns about "vigilante tendencies".

### **Recommendation**

1. We recommend that all interested parties (the community, DLNR, DOBOR, Malama Pono, HIKA, commercial operators, etc.) should be partners in establishing a "Makai Watch" program.

Voted All Present in favor.

### **Alternatives Discussed**

- None.

## Working Group 2 Progress Report: 11/30/05

**To:** Bob Masuda, DLNR  
**CC:** WG2 Participants; WG1 & WG3  
**From:** Gordon Leslie, WG2 Convener  
**Re:** WG2 Progress Report, 11/30/2005

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### Recommendation

1. Prohibit Introductory SCUBA in Kealahou Bay: to mitigate environmental risks. We recommend the prohibition of both certification classes and SCUBA tours for non-certified persons, such as PADI's Discover SCUBA.

	Positive Impacts	Negative Impacts
Environmental & Cultural	<p>Buoyancy control is the most difficult skill students and non-certified and newly certified divers to master. Proper buoyancy control is necessary in environmentally sensitive areas.</p> <p>Damage to coral and other bottom-dwellers from activities certification and Discover scuba tours will be prohibited.</p>	No negative impact.
Recreational		No effect because we recommend that only tour of non-certified divers, and certification of divers, is prohibited.
Commercial		This will reduce business opportunities for scuba operators.

## Summary of Working Group 3 Progress

as of January 31, 2006.

### **Overall Recommendation.**

“If Kealakekua Bay and adjacent land areas (Napo’opo’o and Ka’awaloa) is to be a real, effective Park (marine, historical and cultural), the State needs to provide adequate staffing, including on the ground managers rangers and staff, all provided with reasonable salaries, so as to attract capable people.”

### **Assigned Issues:**

1. Establish a **“kapu” area**, to be identified as Zone C. The area will be closed to all users and uses.
11. **Permit agreements**, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms not to exceed one year, **with commercial kayak operators**, that include permit fees.
12. Assessing a fee, to address the management of rental operators who **rent kayaks offsite** whose guests ultimately end up being used within Kealakekua Bay.
13. **Permit agreements**, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms less than one year, **with commercial drift-in snorkel and scuba operators**.
14. Authorize the department to **evaluate the existing permitting of Fair Wind Cruises and other moorings in the Bay**, and return to the board prior to the expiration of their existing permits with recommendations on subsequent disposition of permits.
16. Authorize the department to work with the commercial entities within the Bay (kayak, drift-in, mooring users) to **establish an appropriate number of users in the bay at any given time**. Further, authorize the chairperson to monitor and be authorized to make immediate adjustments during the term of the permits to the number of users within the bay, as necessary to protect the bay’s resources and to mitigate user conflicts.
20. Authorize the chairperson to work with the SNUBA operator in Kealakekua Bay to **develop proper protocols** to ensure that **SNUBA** activities do not negatively impact the bay’s resources.

### **Group Recommendations and Stakeholder Groups Positions**

#### **Kapu Area - Recommendation:**

The working group unanimously recommended establishing a Kapu area with the boundaries supplied to DLNR in the November 9 meeting minutes. It was agreed that the outer (Makai) boundary be marked with 12” buoys for the first 6 months, to familiarize everyone with the boundary. These would then be replaced with more environmentally and culturally friendly

markers, such as coconuts. It was also suggested that identifying markers be placed on shore to demark the boundary.

### **Permits:**

The issue of permits was discussed but no recommendation was officially voted on.

#### Drift-In snorkel and SCUBA operators

It was the position of Malama Pono that there is no need for additional permits for the drift-ins, since it should be possible to add any restrictions on where to do business on the commercial permits that are currently issued.

#### Kayaks

The majority of the working group members were in agreement that it would be best for the bay to shift kayaking activities of visitors to the bay away from independent kayaking towards guided tours. This included some of the working group members that are currently renting to visitors who then kayak independently in the bay. One of these companies would like to see a transition period to be able to modify their business, shifting the focus to guided tours.

Malama Pono would also like to see a transition from kayaks to Polynesian canoes over a period of three years, to work toward the goal of being esthetic-culturally sensitive.

#### Fair Wind Cruises' mooring permit

The working group did not address this issue.

#### Permit Fees

Permit fees were discussed, and it was generally agreed that it would be good to start with a fee of \$1/customer to start to build the programs in the bay. The main concern of all involved is that the generated funds would go towards programs in the bay.

### **Establish an Appropriate Number of Users**

This issue was not officially voted on. However, below are some of the issues that have been discussed. It has been suggested that the carrying capacity be limited to the number of vessels using the bay on January 1, 2005, as a starting point, to allow for a monitoring program to establish whether this number is sustainable.

#### Swimmers/snorkelers :

The position of Malama Pono is that they do not want the drift-ins to disembark their customers for swimming and snorkeling in the bay, as they feel this constitutes desecration to the area.

The commercial companies, Fairwind, drift-ins, and kayak companies all feel that the disembarking is the main attraction for their trips, while the cultural and historical component is a valuable addition.

#### Kayaks

Following discussions in Working Group #1, Working Group #3 agreed that it would be acceptable to have a maximum of 35 kayaks and/or Polynesian style canoes operating commercially in the bay for guided tours. Each of these vessels could be involved in several trips each day.

Malama Pono would like to see all manual vessels transition to Polynesian style canoes over the next three years.



### Drift-Ins

The drift-in companies have for the last several years voluntarily staggered their arrival and departure times to reduce the number of vessels in the bay at any given time. They are currently limiting themselves to no more than 4-5 vessels and 60 customers in the bay during an average day, and no more than 9 vessels and 125 customers during peak season (Spring break; May – Aug; Thanksgiving week; 18 Dec – New Year). The number of drift-ins is also reduced during the humpback whale season, as the whale-watching activity offshore keeps several vessels away from the bay completely. Some drift-in companies have expressed a willingness to consider limiting commercial activity in the bay during certain periods, either reducing the number of available bookings or having periodic days of rest if this would cover all commercial activity in the bay and would be coupled with the ability to disembark their customers.

One of the drift-ins that just received a commercial permit last year, the Hokuhele, a 50-foot power catamaran were told to, and verbally agreed to, not operate in Kealahou Bay. However, they are currently in the bay on a daily basis, in-shore of many of the snorkelers.

### **Develop proper SNUBA protocols**

This item has been discussed and three different recommendations were voted on as follows:

Three recommendations for the DLNR were proposed and voted on as follows:

1. Limit SNUBA operations to the current user and evaluate over a one year period.

4 – For            2 – Opposed       1 – Abstained

This vote went along stakeholder group lines, with “For” votes from commercial groups and “Opposing” votes from community representatives.

2. Oppose any SNUBA in the bay, recommend that Fairwind move use to another location.

2 – For            4 – Opposed       1 – Abstained

This vote went along stakeholder group lines, with “For” votes from community representatives and “Opposing” votes from commercial groups.

3. Use the previous DNLR recommendation to prohibit all SNUBA and introductory SCUBA diving.

3 – For            4 – Opposed

This vote went along stakeholder group lines, with two of the “For” votes from community representatives and “Opposing” votes from commercial groups.